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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,439	08/30/2001	Oral Fatih Sekendur		7902

7590 05/30/2003

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EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 05/30/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/942,439</b>	Applicant(s) <b>Sekendur</b>
	Examiner <b>Ralph Lewis</b>	Art Unit <b>3732</b>
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>three</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Jan 29, 2002</u>		
2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
*See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

Art Unit: 3732

### **Withdrawal of Finality of Previous Office Action**

The Finality of the previous Office Action mailed 10/22/2002 is withdrawn in view of the following new grounds of rejection.

### **Objection to Duplicate Claims**

Claims 8 and 12 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 2 and 6, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See M.P.E.P. § 706.03(k).

### **Rejection based on Prior Art**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3732

Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander (US 1,040,972).

Alexander provides for a working platform, the patient's mouth (page 1, lines 86-91), a formable metal of metallic fibers (page 1, lines 32-35) which is shaped on the working platform and a solder joining means for forming a solid rigid metallic dental structure (page 1, lines 102-106). The Alexander prosthesis is then inherently "finished" - removed from mold and prepared for insertion in the patient's mouth.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoher et al (5,234,343).

Shoher et al disclose providing a model working platform ("die") Figure 2, providing a formable metal (high fusing temperature metal particles), providing a joining means (low fusing temperature metal particles), shaping the formable model on the working platform (Figure 2), joining the formable metal with low temperature fusing metal by heat treating and then finishing the dental prosthesis by providing for an out tooth like layer (column 1, lines 15-22).

In response to the present rejection applicant argues that the metal particles of Shoher et al do not meet the "formable metal" limitation because it is the wax binder holding the metallic particles which is being formed and shaped and not the particles themselves. The examiner notes, however, that applicant's claims expressly indicate that the formable metal may be "a paste of flux and metal powder" claim 5 which appears to this examiner to be what Shoher et al describe.

Art Unit: 3732

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 6, 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander (US 1,040,972) in view of Shoher et al (5,234,343).

Alexander does not explicitly disclose how the formed dental prosthesis is finished, but one of ordinary skill in the art would readily recognize that at the very least it is polished and cleaned. Furthermore, the ordinarily skilled artisan would readily recognize that such prostheses are typically finished by providing for an outer porcelain or acrylic layer in order to improve the aesthetics of the prosthesis as taught by Shoher et al (column 1, lines 18). To have improved the aesthetics of the Alexander prosthesis by providing for a typical outer tooth-like layer would have been obvious to one of ordinary skill in the art.

Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoher et al (5,234,343).

In regard to claim 14, Shoher et al does not explicitly state that the resulting prosthesis is cemented to a patient's tooth with a flowable cement. For purposes of the rejection based on 35 U.S.C. 102 such a step is considered to be inherent in the use of the Shoher prosthesis. To the

Art Unit: 3732

extent that such a use is not inherent in the teachings of the reference one of ordinary skill in the art would have readily recognized such a conventional manner in attaching the prosthesis as being obvious.

**Applicant's Request that the Examiner Write Allowable Claims**

Applicant's request that the examiner draft allowable claims is noted and after serious consideration and study the examiner is at a loss to provide for any meaningful suggestions in distinguishing the disclosed invention from the prior art. As the new rejections indicate, even if applicant were to limit the claims to formable metallic fibers, then the invention is pretty much met by Jackson (1,040,972). Attention is also drawn to Meisel (4,867,683) who discloses the use of formable metal screen/ mesh/fabric which is formed into a bridge and filled with a joining means to form a solid bridge prosthesis. Finally attention is also directed to the prior art of Kobashigawa et al (5,829,979), Karmaker et al (6,030,220) and Prasad et al (6,200,136 B1). If applicant can provide a clear discussion and indicate how his invention is directed to specific ideas that are not previously known in the art, then the examiner will certainly work with him in properly claiming such subject matter, but as it stands the examiner fails to see or appreciate any patentable distinctions.

Art Unit: 3732

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 872-9302. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis  
May 28, 2003

  
Ralph A. Lewis  
Primary Examiner  
AU 3732